

Neifeld Docket No: CAT/29US-SCROCO

Application/Patent No: 09/401,939

USPTO CONFIRMATION NO: 5333

File/Issue Date: 9/23/1999

Inventor/title: Scroggie/System and Method for Providing Shopping Aids and Incentives to Customers Through a Computer Network

Examiner/ArtUnit: Janvier/3622

**37 CFR 1.7(c) FILING RECEIPT AND TRANSMITTAL LETTER WITH
AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT**

1. **THE COMMISSIONER IS HEREBY AUTHORIZED TO CHARGE ANY FEES WHICH MAY BE REQUIRED, OR CREDIT ANY OVERPAYMENT, TO DEPOSIT ACCOUNT NUMBER 50-2106.**

2. **FEES (PAID HERewith BY EFS CREDIT CARD SUBMISSION) \$:**

A. CLAIMS FEES

0.00 \$ - (claims previously paid for; currently present; \$50 per addl. claim over 20.)

0.00 \$ - (independent previously paid for; currently present; \$200 per addl. claim over 3)

B. OTHER FEES \$:

3. **THE FOLLOWING DOCUMENTS ARE SUBMITTED HERewith:**
NOTIFICATION OF UNDECIDED PETITION AFFECTING APPEAL

4. **FOR INTERNAL NEIFELD IP LAW, PC USE ONLY**

USPTO CHARGES: \$ 0 CLIENT BILLING MATTER: BANK ACCOUNT/Check: G/L ACCOUNT: 2500	FIRM CHARGES: \$ 0 DESCRIPTION: LAWYER: ran
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INITIALS OF PERSON WHO **ENTERED** ACCOUNTING DATAGRAM

ATTORNEY SIGNATURE (AUTHORIZING DEPOSIT ACCOUNT)

DATE: 7-17-2008

SIGNATURE: /RichardNeifeld#35,299/

Printed: July 17, 2008 (1:03pm)

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NOTIFICATION OF UNDECIDED PETITION AFFECTING APPEAL

REMARKS

On 7/16/2008, the appellant receive a BPAI docketing notice noting Appeal No. 2008-4478.

The docketing is premature because there is an undecided petition the decision on which materially affects the appeal. The petition relates to the improper "NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF" dated April 21, 2008. The relief requested in that petition was to:

- (1) withdraw the requirements in the "Notification of Non-Compliant Appeal Brief dated April 21, 2008" to submit an amended appeal brief;
- (2) expunge the requirement to submit an amended appeal brief mailed April 21, 2008 so that it does not detrimentally affect patent term adjustment;
- (3) expunge the replacement appeal brief submitted in response to the Notification of Non-Compliant Appeal Brief dated April 21, 2008;
- (4) reinstate the original appeal brief; and
- (5) specify in the decision that no Patent Term Adjustment (PTA) will be lost or reduced by the number of days in the time period from the filing the original brief or any replacement brief to the filing of the second replacement appeal brief. Cf. 37 CFR 1.704(c)(7).

Decision on that petition will materially affect the appeal, such as upon which appeal brief the panel will base its decision.

Decision on that petition may also affect patent term. See section VII.C.1. "Potential Impact on PTA" in "New Rules of Practice Before the Board of Patent Appeals and Interferences - The Proposed Rules for Ex Parte Appeals, Appeals Data, and Practice Advice", Rick Neifeld, available on <http://www.neifeld.com/advidx.html>.

Hence, the petition should be decided before the appeal.

The appellant wants a decision on the appeal, and this case has lingered too long as it is. However, this paper notifies the BPAI that the application is now procedurally defective, - - do to USPTO procedural errors in this case that should be promptly addressed.

7/17/2008

DATE

Respectfully Submitted,
/RichardNeifeld#35,299/
Richard A. Neifeld
Attorney of Record
Registration No. 35,299

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